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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF ALABAMA, Ex Rel. Charles A. Graddick, as Attorney General of the State of Alabama,

Petitioner

v.

TENNESSEE VALLEY AUTHORITY, et al.,

Respondents

APPENDIX

(Volume II)

TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CHARLES A. GRADDICK
ATTORNEY GENERAL OF
THE STATE OF ALABAMA

EDWARD E. CARNES
ASSISTANT ATTORNEY
GENERAL OF THE STATE
OF ALABAMA

Counsel of Record

Office of Attorney
General
250 Administrative Bldg.
64 N. Union Street
Montgomery, Alabama
36130

(205) 834-5150

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ADDENDUM

I. Meaning of the Terms "Muscle Shoals" and "Muscle Shoals, Alabama"

The terms "Muscle Shoals" and "Muscle Shoals, Alabama", as used in the TVA Act and throughout its legislative history, do not refer to a city, town, or settlement. Instead, those terms describe a length of the Tennessee River in north Alabama, an area surrounding it, and the government project located there. Muscle Shoals has been described as "the 37-mile stretch of the Tennessee River between the head of Browns Island and the site of the present Florence Bridge,"[1] and "a stretch in the Tennessee River extending about 35 miles upstream from

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[1] Hearings on H.R. 16396 and H.R. 16614 Before the House Comm. on Military Affairs, 69th Cong., 2nd Sess., pt. 3 (1928), reproduced at 75 Cong. Rec. 9587 (1932).

the town of Sheffield, Ala." 69 Cong. Rec. 10775 (1928). As Representative Jones from Alabama explained:

> Muscle Shoals formerly was a shoal before the dam was constructed, and that referred to the entire area: Florence, Sheffield, and Tuscumbia. Within a short time after Muscle Shoals dam was built, the Wilson Dam was built, Muscle Shoals was set up.
>
> As I recall, it now has a population between 2,200 and 3,000; but when we use the term "Muscle Shoals," we mean the area, this entire area.[2]

After 1916 when the government dams and nitrate project were built in the Muscle Shoals area, the term "Muscle Shoals" was also used to refer to the government project and investment there. For this reason, the legislative history

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[2]Hearings on the (First) Independent Offices Appropriation Bill for 1954 (H.R. 4663) Before the Independent Offices Subcomm. of the House Comm. on Appropriations, 83d Cong., 1st Sess. [hereafter cited as House Hearings on the First 1954 Appropriations Bill] at 1319 (1953).

of what became the Tennessee Valley Authority is, until after the enactment of the TVA Act of 1933, indexed in the Congressional Record under the term "Muscle Shoals, Ala."

The term "Muscle Shoals, Ala." does not usually mean the then-tiny unincorporated town of Muscle Shoals in the middle of the Muscle Shoals area and near the government development. The principal office mandate of Section 8(a) of the TVA Act, 16 U.S.C. §831g(a), does not involve the location of any facility in the town named Muscle Shoals. Instead, the statutory mandate concerns the location of facilities in the geographical area and on the government project from which TVA originated and which are its historical center.

II. Pre-Enactment History: Muscle Shoals is the Historical Center of TVA and the Reason for its Existence

A. The Origins of the Federal Government's Involvement at Muscle Shoals

The federal government's involvement in Muscle Shoals began a century and a half ago in 1824. That was the year that the breadth of federal control over navigation was established in the landmark case of Gibbons v. Ogden, 9 Wheat 1. That same year Secretary of War John C. Calhoun recommended a survey of the Muscle Shoals area of the Tennessee River as one of the most important projects for improvement of navigation and transportation in the country. The Secretary's recommendation was included in President James Monroe's annual

message to Congress on December 7, 1824.[3]

The ensuing survey resulted in a recommendation in 1828 that a lateral canal be built around a section of the shoals. The construction was begun in 1831 by the State of Alabama using the proceeds from land donated by the United States. Before construction was completed, it was determined that much more would be needed to make the Muscle Shoals section of the river navigable. Congress refused to appropriate the requisite funds for more canals and the completed original canal fell into ruin. Four decades later, in 1872, federal engineers proposed repair and enlargement

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[3]American State Papers: 2 Military Affairs at 698-701 (1834), cited at Report of the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong. 3rd Sess., vol. 1, at 11 (1939).

of the old canal. The project was undertaken and was finally completed in 1890 at a cost of $3 million. However, the project was not successful; commercial navigation at low water was still not practicable. In 1891 a proposal for further canal work was submitted to Congress but never acted upon.[4]

Thus, when the nineteenth century ended, John C. Calhoun's dream of a navigable Muscle Shoals had not been realized. However, the federal government had begun what was to become a massive effort involving hundreds of millions of dollars to turn the Muscle Shoals area into a national asset. That effort was ultimately to culminate in the Tennessee Valley Authority Act of 1933.

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[4]75 Cong. Rec. 9587 (1932) (reprinting a 1931 report of a governmental commission).

The early focus on north Alabama and the Muscle Shoals area was to become even sharper before the new corporation was created and required to locate its principal office in that area.

The federal government's Muscle Shoals efforts during the nineteenth century centered around the theme of navigation, but during the early part of the twentieth century another theme emerged to coexist with the earlier one. The new theme was electrical power generation. Between Chattanooga, Tennessee and Paducah, Kentucky, where the Tennessee joins the Ohio, it fell in its natural state (as measured from sea level) about 340 feet. Nearly one-third of this fall was at the Muscle Shoals.[5] The

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[5]75 Cong. Rec. 9587 (1932) (reprinting a 1931 report of a governmental commission).

fall of the water aggravated the navigation problem and helped to give the stretch of the Tennessee River the name Muscle Shoals, which is said to have been derived from the muscular effort required to push water craft upstream in the early days.[6] The fall of the water also raised the potential for production of significant amounts of electric power, a potential which was noticed very early.

The improvement of navigation and the production of power were not mutually exclusive goals. In 1899, Congress enacted a statute giving an Alabama corporation permission to construct canals and a power station "at or near the Muscle Shoals in Tennessee River", provided it did not interfere with navigation. 30 Stat. 1351 (1899). The

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[6] Id.

project was never undertaken.[7] There followed several unsuccessful proposals for a joint private-government investment in navigation and power projects at Muscle Shoals.

B. The National Defense Act of 1916

When the United States entered World War I it needed new domestic sources of nitrates, an essential element in munitions and a useful element in the manufacture of fertilizer. Toward meeting this end Section 124 of the National Defense Act of 1916 was enacted. It authorized the President to construct nitrate plants and electrical power plants and dams upon any river or public

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[7] Report of the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong. 3rd Sess. [hereafter cited as Joint Committee Report] at 11 (1939).

land. President Wilson selected the Muscle Shoals area as the site for this development. H.R. Rep. No. 48, 73rd Cong., 1st Sess. 2 (1933). Muscle Shoals was selected because the process then used for producing nitrates required a large amount of electrical power. S. Rep. No. 19, 70th Cong., 1st Sess. 5 (1929).

The government project at Muscle Shoals constructed pursuant to the National Defense Act was located on 4,000 acres of land and consisted chiefly of Nitrate Plant No. 1 and Nitrate Plant No. 2 and the Wilson Dam. Nitrate Plant No. 1 was located at Sheffield, Alabama. Nitrate Plant No. 2, which was larger, was located at the town of Muscle Shoals, Alabama, about four miles upstream from the other plant and just across the Tennessee River from Florence, Alabama. Electricity-producing steam plants and

a limestone quarry were also part of the project.[8] A decade and a half after the National Defense Act of 1916 was enacted, the federal government had invested approximately $150 million in its projects at Muscle Shoals. 77 Cong. Rec. 2201, 2269, 2344, 2638 (1933).

C. The Pre-1928 Efforts to Utilize the Muscle Shoals Properties

After World War I, the question of what to do about the Muscle Shoals section of the Tennessee River was supplanted by the question of what to do with the government investment there. The great issue of the day was private enterprise versus government utilization,

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[8] Majority Report of the President's Muscle Shoals Inquiry of 1925, reprinted in H.R. Rep. No. 1095, 70th Cong. 1st Sess. 6 (1928); 75 Cong. Rec. 9588 (1932) (reprinting a 1931 report of a governmental commission).

and the prevailing political climate initially favored private enterprise. Literally dozens of bills were introduced in Congress, the vast majority of which provided for a lease or sale of the project to private enterprise.[9] None realized its goal. Bills providing various plans of government operation or mixed government-private operation of the Muscle Shoals properties were considered and rejected. Thousands of pages of hearings were devoted to the subject, and while it was being debated the political climate shifted in favor of the Progressives. This shift produced the Muscle Sholas legislation of 1928 and 1931, which were the forerunners of the TVA Act of 1933.

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[9]The most famous, or infamous, prospective lessees were Henry Ford and the American Cyanamid Company. H.R. Rep. No. 48, 73rd Cong., 1st Sess., at 3 (1933).

The government project at Muscle Shoals became the heart of the TVA as it was originally envisioned, and the question of what to do with the multi-million dollar investment in Muscle Shoals led to enactment of the TVA Act of 1933. TVA did not spring full-grown from the breast of New Deal Progressivism. Instead, it was the Progressive answer to the long-standing, much debated question of what to do with the federal government's $150 million investment in the Muscle Shoals area of north Alabama. As a Senate report said in 1929:

> Muscle Shoals is an old friend. After more than 10 years of investigation, discussion, and consideration it is still with us. Up and down the ragged road of legislative consideration we have traveled through many weary and discouraging epochs of parliamentary mysteries and doubts. Senators have been born into and have died out of its various controversies, and, like Jarndyce v.

Jarndyce, it is still with us.[10]

D. The Muscle Shoals Legislation of 1928 and 1931

The disputed principal office language was not written anew for the TVA Act of 1933. Instead, it was lifted verbatim from two previous pieces of legislation which had been passed by Congress and vetoed by hostile Presidents. This original legislation from which the principal office language draws its meaning is the Muscle Shoals Act of 1928 and 1931.

The Muscle Shoals Act of 1928 would have established the Muscle Shoals Corporation of the United States to operate the government property in the Muscle Shoals area, primarily for the

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[10] S. Rep. No. 19, 70th Cong., 1st Sess., at 1 (1929).

production of fertilizer.[11] Muscle Shoals was the center of the activities which the corporation was to supervise, and §7(a) provided:

> (a) The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to venue of civil suits. (Emphasis added)

The principal office language is identical to what was to become §8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a).

The Muscle Shoals Act of 1928, and the principal office provision it contained, originated as an amendment in the nature of a substitute in the House Committee on Military Affairs. H.R. Rep. No. 1095, 70th Cong., 1st Sess. Lister

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[11]The Muscle Shoals Act of 1928 is reprinted in full in H.R. Rep. No. 1095, 70th Cong., 1st Sess.

Hill of Alabama was a member of that committee at the time the legislation was written by it. He testified very unequivocally before the Joint Congressional Committee to Investigate the TVA in 1938 about the Military Affairs Committee's intent behind the principal office provision:

> The idea and the purpose of the committee in putting that language in the bill was that the actual headquarters, that those whose business it was to carry on the permanent work, to set the policies, to be the chiefs and the head, should have their office at Muscle Shoals, Ala.
>
> And in that connection, let me say that back in 1928 the Committee on Military Affairs of the House had a full picture of the situation, in many ways, just about as full as we have today, for this reason; that the engineers, the Army Engineers, at that time had completed the finest and most detailed survey of the Tennessee River that has ever been made of any river in the whole world, and we had that survey of the engineers before

> us at the time we put this language in the bill.
>
> We knew what we were doing; we knew what we wanted to do. We had the facts that Senator Bankhead has given us this morning about the geographical importance; the fact that after all is said and done, Muscle Shoals is, so to speak, the center of gravity of any activity in that whole great valley.
>
> All of the facts showed that Muscle Shoals was a logical place, that it was a feasible place, and that economy and efficiency dictated that the headquarters be placed there.
>
> I was a member of the Committee on Military Affairs when that language was written into the bill. . .[12]

The Muscle Shoals Act of 1928 was pocket-vetoed by President Coolidge. 79 Cong. Rec. 2926 (1929).

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[12]Hearings Before the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong., 3rd Sess. [hereafter Joint Committee Hearings] at 5224 (1938) (Emphasis added)

Following President Coolidge's veto of the Muscle Shoals Act of 1928, Senator Norris introduced S. J. Res. 49 of the 71st Congress on May 28, 1929. 69 Cong. Rec. 2148. Except for the addition of a section giving Alabama and Tennessee a small percentage of the power revenues collected, Senator Norris' S. J. Res. 49 was the same as the previously vetoed legislation, and the principal office provisions were identical. S. Rep. No. 19 at 15.

In the process of becoming the Muscle Shoals Act of 1931, S. J. Res. 49 was reported out of committee accompanied by S. Rep. No. 19. A passage of the committee report which provides valuable perspective for the principal office provision is as follows:

> When the Government commenced the construction of these great plants it was necessary to build homes for the workers, and the Government

> bought sufficient land and built a town at nitrate plant No. 1, and another town at nitrate plant No. 2. At nitrate plant No. 1 we have over one hundred permanent houses, and nearly two hundred permanent residences at plant No. 2. Permanent residences were also constructed at Waco quarry. The houses at the nitrate plants were fully equipped with every modern convenience. A large number of other houses were also built for temporary purposes. Over 30 miles of macadamized roads were constructed on this property. A large furnished hotel was constructed by the Government at nitrate plant No. 2. At these two Government-owned towns there are 4,200 acres of land, a great portion of which is still vacant and ready for additional improvement.
>
> The question now is, and for 10 years has been, what shall the Government do with this great investment?. . .[13]

The government corporation which this legislation would have created had it not

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[13] S. Rep. No. 19 at 7. (Emphasis added).

been vetoed was to be named the "Muscle Shoals Corporation of the United States". While the committee report describes abundant government housing, facilities, and land available in the Muscle Shoals area for the proposed corporation, the report does not mention any similar facility available in Knoxville or elsewhere. Indeed the very title of the Senate report, submitted by Senator Norris, is "Disposition of Muscle Shoals".

S. J. Res. 49 passed the Senate with only minor amendments. 72 Cong. Rec. 6511 (1930). After the House passed a different bill, a conference committee reported out a compromise bill. H.R. Rep. No. 2747, 71st Cong., 3rd Sess. (1931). In the compromise bill, §7(a), the principal office provision, was left intact. No changes relevant to the

meaning of that provision were made in any other part of the bill. The compromise measure was approved by both Houses of Congress, but it was vetoed by President Hoover who protested government competition with private business. 74 Cong. Rec. 7046 (1931).

III. The Tennessee Valley Authority Act of 1933

Legislation dealing with the Muscle Shoals properties finally became law during the 73d Congress, 1st Session as Public Law No. 17, 48 Stat. 58, the "Tennessee Valley Authority Act of 1933." That statute, as subsequently amended, is the present law on the subject. 16 U.S.C. §831. None of the subsequent amendments have changed the language or effect of the principal office provision, §8(a) of the 1933 Act, 16 U.S.C. §831g(a).

A. Section 8(a)

The TVA Act of 1933 is the product of two bills in the 73d Congress, 1st Session --S. 1272 introduced by Senator Norris and H.R. 5081 introduced by Representative Lister Hill of Alabama.[77] Cong. Rec. 2055. The principal office provisions of each of these two bills were identical to the principal office provision in the Muscle Shoals Act of 1928 and the Muscle Shoals Act of 1931, discussed on pp. 95a-102a of this addendum, above. That provision, which originated in those earlier acts and which was continued in both the Norris and Hill bills, was enacted into law unchanged as Section 8(a) of the final act.

B. Section 2(e)

Section 2(e) of Representative Hill's H.R. 5081 provided:

> Each of the members of the board shall be a citizen of the United States and shall receive compensation without regard to the provisions of other laws applicable to the officers and employees of the United States, at the rate of $10,000 a year, to be paid by the Authority as current expenses. Members of the board shall be reimbursed by the Authority for actual expenses (including traveling and subsistence expenses) incurred by them while traveling in the performance of the duties vested in the board by this Act. All members of the board shall reside in the vicinity of Muscle Shoals, Alabama, and shall devote their entire time to the work of the authority.[14]

The relevant paragraph of section 2(e) of Senator Norris' S. 1272 provided:

> Each of the members of the board shall be a citizen of the United States. The chairman of the board shall receive a salary of $10,000 a year. Other members of the board shall receive salaries of $9,000 each per annum. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of

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[14] 77 Cong. Rec. 3563 (Emphasis added).

> the dwelling houses now owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses while in the performance of the duties vested in the board by this act. No member of said board shall, during his continuance in office, be engaged in any other business, but shall give his substantial time to the business of said Corporation.[15]

During debate over S. 1272 in the Senate, Senator Logan of Kentucky questioned Senator Norris about the adequacy of the salary provided in his bill to attract High-calibre men to the full-time job of Director. Senator Norris replied:

> Mr. President, I realize that there is very much disagreement as to whether we could get a man for $9,000 or $10,000 who could fill this place. I am of the opinion that we could. I do not believe there would be any difficulty. If a

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[15] 77 Cong. Rec. 3563 (Emphasis added).

member of the board desires to live in Muscle Shoals -- and I think it is a beautiful place to live -- he would have his house rent free, in addition to his salary.[16]

After the House passed H.R. 5081, the Senate substituted S. 1272 for it. 77 Cong. Rec. 277 -2809 (1933). The differences between the two bills were ironed out in a conference committee which included Senator Norris, 77 Cong. Rec. 3125, and Representative Lister Hill. 77 Cong. Rec. 3125, and Representative Lister Hill. 77 Cong. Rec. 3084 - 3085. The final version of §2(e), incorporating the Senate version's free residence at Muscle Shoals for its directors, is presently codified as 16 U.S.C. §831a(e). It provides:

> Each of the members of the board shall be a citizen of the

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[16] 77Cong. Rec. 2687 (1933) (Emphasis added).

United States, and shall receive a salary at the rate of $10,000 a year, to be paid by the Corporation as current expenses. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the board by this act. No member of said board shall, during his continuance in office, be engaged in any other business but each member shall devote himself to the work of the Corporation. (Emphasis added)

During hearings held in 1938 by the Joint Committee to Investigate the TVA, Senator Sparkman explained the evolution of §2(e) of the act. He testified:

> The house bill said, "all members shall reside in the vicinity of Muscle Shoals, Ala." but did not mention free rent. The Senate coupled the residence and free rent. When the

> conference agreement was reached naturally the Senate provision giving free rent as a part of the salary was accepted, the clear intention being that they should live there where the act said their work was to be. In the debate in the Senate after the bill had been adopted in the House Senator Norris was asked to explain any differences between the House bill and the one he was sponsoring. He explained there were only two differences -- transmission of power and manufacture of fertilizer. There was no difference as to the meaning to be gathered from these sections as to where the main offices should be and the directors should reside and work. . . .[17]

The House version of §2(e) would indisputably have located TVA headquarters in the Muscle Shoals area, because it required the directors to reside there. If the final version of the TVA Act, which includes the principal office provision, does not require TVA headquarters or the

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[17] Joint Committee Hearing, supra at 3762 (Emphasis added).

directors' offices to be located near Muscle Shoals, then a substantive change was made in §2(e) by the conference committee. There is no indication whatsoever that the conference committee intended such a change or that anyone in Congress thought that such a change had been made. Various fundamental differences between the House and Senate bills were pointed out and discussed during debate prior to enactment of the final version of the legislation. E.g., 77 Cong. Rec. 2635, 2638 -2639, 2663. No difference concerning the location of corporate headquarters was ever mentioned. The statement of the House managers which accompanied the conference report pointed out more than 20 differences between the House and Senate bills and discussed how they were resolved, 77 Cong. Rec. 3560 - 3561, but not the slightest mention was made of any difference between the two

bills concerning the location of TVA headquarters and the offices of its Board of Directors.

C. Section 9(b)

Both the House and the Senate bill made provision for TVA to be audited by the Comptroller General. Section 10(b) of H.R. 5081 provided:

> The board shall require a careful and scrutinizing audit and accounting by the General Accounting Office or its successor in performing similar duties, during each governmental fiscal year of operation under this act, and said audit shall be open to inspection to the public at all times, and copies thereof shall be filed in the principal office of the Authority at Muscle Shoals, in the State of Alabama. At least once during each fiscal year the President of the United States shall appoint a firm of certified public accountants of his own choice and selection which shall have free and open access to all books, accounts, plants, warehouses, offices, and all other places, and records, belonging to or under the

> control of or used by the Authority in connection with the business authorized by this act. And the expenses of such audit so directed by the President shall be paid by the board and charged as part of the operating expenses of the Authority.[18]

Section 9(b) of S. 1272, provided as follows:

> The Comptroller General of the United States shall audit the transactions of the Corporation at such times as he shall determine but not less frequently than once each fiscal year, with personnel of his selection. In such connection he and his representatives shall have free and open access to all papers, books, records, files, accounts, plants, warehouses, offices, and all other things, property, and places belonging to or under the control of or used or employed by the Corporation, and shall be afforded full facilities for counting all cash and verifying transactions with and balances in depositaries. He shall make report of each such audit in

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[18] 77 Cong. Rec. 3574 (1933) (Emphasis added).

quadruplicate, one copy for the President, one for the chief officer of the Corporation, one for public inspection, and the other to be retained by him for the uses of the Congress. The expenses of each such audit may be paid from moneys advanced therefor by the Corporation, or from any appropriation or appropriations for the General Accounting Office and appropriations so used shall be reimbursed promptly by the Corporation as billed by the Comptroller General. All such audit expenses shall be charged to operating expenses of the Corporation. The Comptroller General shall make special report to the Congress of any transaction or condition found by him to be in conflict with the authority or duties intrusted to the Corporation by law.[19]

Section 9(b) of the bill reported out by the conference committee, combined the House and Senate versions to provide as follows:

> The Comptroller General of the United States shall audit the transactions of the Corporation at such times as he

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[19] 77 Cong. Rec. 3573 (1933) (Emphasis added).

shall determine, but not less frequently than once each governmental fiscal year, with personnel of his selection. In such connection he and his representatives shall have free and open access to all papers, books, records, files, accounts, plants, warehouses, offices, and all other things, property and places belonging to or under the control of or used or employed by the Corporation, and shall be afforded full facilities for counting all cash and verifying transactions with and balances in depositaries. He shall make report of each such audit in quadruplicate, one copy for the President of the United States, one for the chairman of the board, one for public inspection at the principal office of the Corporation, and the other to be retained by him for the uses of the Congress. The expenses of each such audit may be paid from moneys advanced therefor by the Corporation, or from any appropriation or appropriations for the General Accounting Office, and appropriations so used shall be reimbursed promptly by the Corporation as billed by the Comptroller General. All such audit expenses shall be charged to operating expenses of the Corporation. The Comptroller General shall make special

> report to the President of the United States and to the Congress of any transaction or condition found by him to be in conflict with the powers or duties intrusted to the Corporation by law.[20]

That provision was enacted as Section 9(b) of the TVA Act of 1933, and as amended is contained in 16 U.S.C. §831h(b). None of the subsequent amendments removed the relevant language requiring that a copy of the report be maintained for public inspection at the principal office.[21]

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[20] 77 Cong. Rec. 3573 - 3574 (1933) (Emphasis added).

[21] TVA maintained in the district court that section 9(b), 16 U.S.C. §831h(b) had been superceded by section 105 of the Government Corporation Control Act, as amended, 31 U.S.C. §850. The legislation TVA refers to was not enacted until twelve years after the TVA Act of 1933, and could have no effect on the pre-enactment legislative intent behind Section 8(a) as it was reflected in Section 9(b).

IV. The Early Period - 1933 to 1938

A. The Board Resolutions

The TVA Act became law on May 18, 1933. The first meeting of the Board of Directors was held on June 16, 1933. The minutes of that meeting reflect that:

> The Board adopted a motion that offices of the Authority should be established at Knoxville, Tennessee, in addition to the office required by law to be located at or in the vicinity of Muscle Shoals, Alabama. The Board determined that in view of the construction activity at Cove Creek Dam, and in view of the location in Knoxville of the law library of the University of Tennessee, the principal office of the legal department should be located at Knoxville.[22] (Emphasis added)

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[22] A copy of the minutes of that meeting was attached as an appendix to Alabama's December 9, 1977 brief in the district court, and was transmitted to the appellate court on March 13, 1979, with the record on appeal. See, R. 319. [References to "R" are to the record on appeal.]

At a meeting held on July 30, 1933, the Board of Directors adopted the following resolution:

> WHEREAS, Section 8 (a) of the Act creating the Tennessee Valley Authority provides that the principal office of the Authority shall be maintained in the immediate vicinity of Muscle Shoals, Alabama;
>
> NOW, THEREFORE, BE IT RESOLVED, That the principal office be established and is hereby established on the Government property at Muscle Shoals. It is further ordered that for purposes of effectively prosecuting the work of the Authority, auxiliary offices be maintained at Chattanooga, Knoxville, and Washington, District of Columbia. (R. 12-13)

B. The G.A.O. Recognizes TVA's Violation of Section 8(a)

In the first official General Accounting Office audit of TVA, covering the period from June 10, 1933 to June 30, 1934, an exception was taken to the rent TVA paid for certain office space in

Knoxville. The reason an exception was taken was the Comptroller General's opinion that "[t]he law specifically requires that the headquarters of the corporation be established in the vicinity of Muscle Shoals, Alabama."[23] The G.A.O.'s 1934 audit report contains the following relevant paragraph:

> The law specifically requires that the headquarters of the Corporation be established in the vicinity of Muscle Shoals, Ala., where the already completed Wilson Dam, generating plant, transmission system, fertilizer, steam and ice plants, also permanent homes, storehouses, shops, railroad facilities, and other government owned property were located and in operation. The Wheeler Dam and Townsite and other contemplated projects are also within comparatively convenient distance (20 miles)

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[23] Joint Committee Hearings, supra at 4480 (Emphasis added).

of the prescribed location for the principal office.[24]

In the court of appeals, TVA asserted that this 1934 audit report was tentative, and implied that it was superceded by the 1935 audit report. The 1935 report, which covered a different period of time, contained the following two paragraphs:

> Section 8(a) of the act specifically provides that "The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama". Despite the provision of law, supra, to which the corporation's attention was invited in a previous report, the matter is again mentioned because of the continued increasing expenditures amounting to

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[24]General Accounting Office 1934 Report of Audit of the Transactions of the Tennessee Valley Authority, at 92-93. A copy of the relevant portion of this audit was attached to Alabama's December 9, 1977 brief in the district court, and was transmitted to the appellate court on March 13, 1979, with the record on appeal. See, R. 319.

> approximately $150,000 during the fiscal year 1935 for rent, maintenance, and reconditioning of buildings in Knoxville, Tenn., where the corporation actually established and still maintains its principal offices. However, the corporation made provision at First Quarters for a board room, and an office for each of the directors, and appointed the manager of the Muscle Shoals Operations as secretary to the Board, thereby complying with the letter requirements of the act.
>
> The reasons advanced for locating the active executive and administrative offices at Knoxville were lack of housing facilities at Muscle Shoals and the desire to be near Norris Dam, which was then under construction.[25]

This report did not replace the 1934 one, nor is this report G.A.O.'s final word on the subject. In 1938, G.A.O.'s Chief of Investigation testified as a representative of the Comptoller General that in his opinion the principal office

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[25]General Accounting Office 1935 Report of Audit of the Transactions of the Tennessee Valley Authority, at 196 (Emphasis added).

provision of section 8(a) meant headquarters.[26]

In any event, even assuming that the 1935 G.A.O. report was the proper approach to the issue, it would not provide refuge for TVA's present situation. As the passage quoted above indicates, G.A.O. interpreted the act to at least require TVA to locate in Muscle Shoals "an office for each of its directors". TVA admits that its directors now have offices in Knoxville, and none in Muscle Shoals. (R. 45-46, 51, 161, 245, 247).[27]

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[26]Joint Committee Hearings, supra at 4405, 4480-4485 (1938).

[27]While TVA does claim that one of the rooms in the National Fertilizer Building on the Muscle Shoals Reservation is a "board meeting room", it has been used only once for a board meeting in the twelve years preceding the filing of this lawsuit. (R. 10-11, 61-62) TVA maintains similar "board meeting rooms" in Chattanooga and Washington, but virtually all of the regular monthly meetings of the board are held in the principal board meeting room in Knoxville. (R.54-55, 61).

C. Senator Hugo Black Protests TVA's Violatin of Section 8(a)

From July of 1934 through March of 1936, Senator Hugo Black and TVA officials exchanged letters on the principal office issue.[28] In Senator Black's first letter, dated July 2, 1934 and addressed to the TVA Board of Directors, he stated:

> For your information, I am enclosing copy of an advertisement appearing in yesterday's Birmingham Age-Herald with reference to the Tennessee Valley Authority. This particular advertisement is complaining because the headquarters of the Tennessee Valley Authority have not been established at Muscle Shoals as the Muscle Shoals bill plainly provides.

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[28]These letters are reprinted in their entirety in Joint Committee Hearings, supra, at 5207-5211.

A copy of an August 13, 1934 letter from Senator Black to President Roosevelt is contained on R. 16-18. President Roosevelt's reply, which is contained on R. 20-21, was drafted in its entirety by TVA. (R. 258)

Already, I have talked with each member of the commission about this subject. Immediately upon receiving information that an office was to be established at Knoxville, I talked with Dr. Arthur E. Morgan personally in the City of Washington.

Dr. A. E. Morgan explained to me then that it was necessary to have an office at Knoxville for the purpose of building Norris Dam. At that time, there had been no provisions for building Wheeler Dam. I agreed with Dr. Morgan that it would be necessary to have some kind of office close to Norris Dam at that time, but I stated that I hoped no definite arrangements would be made for permanent offices in that vicinity, because it was my intention to insist as vigorously as I could that the law be complied with and that the headquarters of the Tennessee Valley Authority be maintained at Muscle Shoals.

As I am largely reponsible for the provision of the bill which requires that the Tennessee Valley Authority maintain its principal office "in the immediate vicinity of Muscle Shoals, Ala.," I think I can safely say that no one has ever anticipated that there was any possibility that headquarters

would be established at Knoxville or at any distance so far away from Muscle Shoals. . . .[29]

Having not received a reply to that first letter, Senator Black wrote another dated July 11, 1934 in which he stated:

> Last week I wrote you about the failure of the Tennessee Valley Authority to abide by the law creating it, and to establish headquarters at Muscle Shoals, Ala. Up to this time I have not received a reply to that communication.
>
> I wish again to call your attention to the fact that the law is positive and definite on this subject. There can be no ambiguity in the law. The law says, and the law was intended to say, that the members of the Tennessee Valley Authority should have no discretion whatever as to the location of the headquarters of this organization. The location of the headquarters is fixed by the law creating the board, and the board has no right to ignore this provision of the

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[29] Joint Committee Hearings, supra at 5207 (Emphasis added).

> law than it has to ignore any other provision of the law. Neither the Tennessee Valley Authority, nor any other official of the United States, has any power on earth to change the effectiveness of this provision.
>
> As I stated to you before, I am sympathetic with the Tennessee Valley Authority. I have tried to work completely in harmony with the members of that Board. I have defended them publicly and privately. Last week I had occasion before a public group to defend the Tennessee Valley Authority.
>
> I cannot, however, defend a plain, palpable and open violation of the statute. It gives the enemies of the Tennessee Valley Authority an argument which is unanswerable. I do not consider it to be a friendly act to the Administration. . . . .[30]

The Chairman of TVA's Board of Directors replied to Senator Black in a letter dated July 14, 1934, which stated:

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[30]Joint Committee Hearings, supra at 5208-5209 (Emphasis added).

. . . . When we selected Knoxville as the point for the location of most of the offices it was obvious to us that the work of these offices could be more efficiently and economically conducted from Knoxville. We are still of that opinion.

We have offices located in Washington, Knoxville, Chattanooga, and Muscle Shoals, with considerable personnel at the latter three points. The situs of our official headquarters is at Muscle Shoals, in conformity with our interpretation of the act and in conformity with the usual procedure among corporations where several field offices are necessary.

As soon as I have an opportunity to discuss the matter with my associates we will reply further to your communication.[31]

Senator Black quickly responded to the Chairman, in a letter dated July 16, 1934, which reads in its entirety:

Today I am in receipt of your letter of July 14. I note that you will have a meeting of

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[31] Joint Committee Hearings, supra at 5209 (Emphasis added).

the entire Muscle Shoals Commission, in connection with the location of the Muscle Shoals headquarters.

I regret very much to read the paragraph of your letter which is as follows: "We have offices located in Washington, Knoxville, Chattanooga, and Muscle Shoals, with considerable personnel at the latter three points. The situs of our official headquarters is at Muscle Shoals, in conformity with our interpretation of the Act and in conformity with the usual procedure among corporations where several field offices are necessary."

I regret exceedingly that this statement was made in your letter. In many public statements, the Knoxville papers have quoted statements of at least one member of the commission to the effect that the headquarters were in Knoxville. Comments have been made upon the amount of money spent at headquarters.

If this matter is to be fought out in the courts, it should be fought out on a fair and just basis. If the commission believes that it has the right, in the face of the statute, to establish headquarters at Knoxville, Tenn., that is one thing. It is quite another thing, however, to make a

statement that there is a technical location of headquarters at Muscle Shoals.

As one who stood for the provision making Muscle Shoals headquarters, I know that no single individual had in mind that Muscle Shoals would be made technical headquarters. It was contemplated that Muscle Shoals should be the actual headquarters of the Tennessee Valley Authority.

This was natural. The people of Alabama have been working for this project for many years. It was due to their tenacity, along with some of the Members of the Senate and House of Representatives, that this question was kept alive.

I desire to repeat that I consider that the establishment of headquarters at Knoxville is in plain, open, and palpable violation of law.

I wish to be in a situation to support the Tennessee Valley Authority 100 percent. I am for the program. I do not consider, however, that there is any defense that can be presented for violation of the mandatory provisions of the act

requiring headquarters to be located in Muscle Shoals.[32]

In a letter dated August 15, 1934, TVA's Chairman responded to Senator Black as follows:

> This is a follow-up of our discussion concerning the location of the principal office of the Tennessee Valley Authority.
>
> The wording of the Tennessee Valley Authority Act is the wording generally used in defining the legal headquarters of a corporation. The principal office of a corporation in both law and practice is the legal domicile of the corporation where summonses and notices may be given. There are hundreds of corporations in America, both private corporations and public corporations like the Tennessee Valley Authority, of which the principal offices are located at one point and the business and working offices at another. For instance, in the State of New York, where the law states that a public corporation shall

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[32] Joint Committee Hearings, supra at 5209 - 5210 (Emphasis added).

have its principal office at Albany, the seal of the corporation and its legal agent will be at Albany, and the working office of the corporation may be in New York City, if that is a more appropriate place to work. The Tennessee Valley Authority has followed the customary and legal procedure in this case.

We have tried to handle our program in the way that would be to the highest benefit to every one involved, and to work for the Tennessee Valley area as a whole and not for any section. To do other than this, in our opinion, would be to fail in our duty.

The facilities of Knoxville for carrying on the administrative work of the district are so superior to those about Muscle Shoals that there seemed to be no question as to where our duty lay in this respect.

In saying that we have endeavored to avoid sectionalism in the work of the Tennessee Valley Authority, I might draw your attention to the fact that while Tennessee covers a larger portion of the valley area than any other State, there are more Tennesssee Valley Authority

> employees in Alabama than in all the other states together. Incidentally, there are about twice as many employees at Muscle Shoals as there are at Knoxville.[33]

Senator Black remained convinced that TVA's course of action was plainly in violation of the mandate of the principal office provision. In the final letter in the exchange, Senator Black on March 2, 1936, wrote the Chairman that:

> In your telegram several days ago you indicated that efforts were being made to locate suitable additional quarters in the Muscle Shoals district. This is, of course, very gratifying to me. It is my own belief that one of the weakest things in connection with the entire Tennessee Valley Authority position today is the fact that headquarters have not been established in the Muscle Shoals district as required by law. Certainly there can be no reason why the headquarters for

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[33] Joint Committee Hearings, supra at 510 - 511 (Emphasis added).

the fertilizer part of the program should be anywhere else except where the fertilizer is being worked upon. It is my understanding that you not only have headquarters of the entire Tennessee Valley Authority at Knoxville, but that the headquarters of the fertilizer division of the program are also at Knoxville. It is also interesting to note that Congressman McReynolds of Chattanooga has protested against any further activities at Knoxville.[34]

D. Remarks Made on the Floor of the House of Representatives During the 79th Congress, 1st Session Recognize TVA's Violation of Section 8(a)

On June 13, 1939, Representative May of Kentucky made some comments on the floor of the House of Representatives concerning where the law required TVA's

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[34] Joint Committee Hearings, supra at 5211 (Emphasis added). Senator Black was appointed to the Supreme Court in August of 1937.

headquarters to be. In commenting, he said:

> We required them to keep their principal office at Muscle Shoals, and provided in the act that the directors should live in a house free of rent at Florence, Ala. yet they went to Knoxville, Tenn., and rented five of the biggest office buildings in Knoxville and have more than 5,000 office employees in the Tennessee Valley riding automobiles at 5 cents a mile and running up expense accounts three times in excess of the railroad fare from Knoxville to Muscle Shoals. That is economy you have.....[35]

When Representative Sparkman of Alabama said he agreed with Representative May that the location of TVA's principal office ought to be in the immediate vicinity of Muscle Shoals, May replied:

> I agree with the gentleman; but he misunderstood my meaning, because I am just using that as an illustration to show their utter disobediance of the

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[35] 84 Cong. Rec. 7117 (Emphasis added).

disobediance of the mandate of Congress. That is why I mentioned it. I do not care where they keep their office, except they ought to be made to obey the law . . . .[36]

V. The Frahn Case: Judge Murphree Expresses his Opinion that TVA's Interpretation of Section 8(a) is Probably Contrary to the Congressional Intent

In 1939, Harry J. Frahn and ten other residents of Colbert County, Alabama filed suit in the Northern District of Alabama against TVA for violating section 8(a). The result of that lawsuit is reported as Frahn v. Tennessee Valley Authority, 41 F. Supp. 83 (N.D. Ala. 1941). Neither the State of Alabama nor any official of it was a party to the lawsuit, and no attorney representing the state appeared at any

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[36] Id. (Emphasis added).

stage of it. Instead, as the Frahn court viewed the proceeding, 41 F. Supp. at 84:

> The plaintiffs bring this action as citizens and taxpayers of the communities near Muscle Shoals for themselves and for other similarly situated and ask that a declaratory judgment be entered against the Tennessee Valley Authority and its directors adjudging and holding that they are not complying with the above provision of said Act, and in effect praying that they be made to comply by order of this court.

In explaining why it dismissed the Colbert County citizens' complaint, the court explained:

> Defendants have filed a motion to dismiss the petition for failure to state a claim, relying upon two grounds: (1) Lack of legal interest in the plaintiffs to demand judicial relief, (2) lack of judicial power to control the discretion of the executive branch of the government within matters of the primary jurisdiction of the latter.
>
> The question is one of wide public interest to people of Northern Alabama. That the Tennessee Valley Authority in

> actuality maintains its principal place of business and its general headquarters in the State of Tennessee is a matter of common knowledge. It is probably true that great public benefit would accrue to the Muscle Shoals communities and the people living there if the officers and offices of the Tennessee Valley Authority had been located according to the letter of the Act. The court feels constrained to say that there may have been an interpretation placed upon the quoted provision of the Tennessee Valley Authority Act which was not intended when the Act was adopted by Congress, and doubtlessly, the selection of the personnel of the Board of the Tennessee Valley Authority very greatly influenced the adopted interpretation. However, for reasons which the court will hereinafter set out, the motion of the defendants to dismiss for failure to state a claim must be granted, for the court is without jurisdiction in this proceeding to determine the issue. Id. (Emphasis added)

The court then went on to cite and discuss standing cases, and it held that the plaintiffs did not have standing to bring the lawsuit. While the court did

discuss the issue of administrative discretion, the only case cited in that discussion was Massachusetts v. Mellon, 262 U.S. 447 (1923), a standing case. The final paragraph of the opinion is, 41 F. Supp. at 86:

> The court is convinced that the motions of the defendants to dismiss the petition must be granted for the failure to present a justiciable controversy upon which a declaratory judgment, of the nature prayed for in the petition, may be entered.

The Section 8(a) issue had never been the basis of a lawsuit brought by a party deemed to have standing, until the district court ruled that the State of Alabama had standing to litigate the issue in this case.

VI. The Joint Committee Proceedings

A. The Resolution

On April 4, 1938, the 75th Congress adopted Public Resolution No. 83 which created a joint congressional committee to investigate TVA. 52 Stat. 154. While one of the issues considered was whether TVA had complied with §8(a) of the act, the committee's investigation was far from a single-minded consideration of the true meaning of §8(a). The resolution directed the joint committee to investigate twenty topics, which included everything from the number, motivation, and effect of public utility suits against TVA to whether any of its directors had been guilty of improper conduct.

B. The Hearings

During the course of hearings conducted on the various topics, TVA officials defended their interpretation of §8(a).[37] No one other than TVA officials testified in support of their interpretation. The only testimony concerning the legislative history of the provision came from Alabama's congressmen, all of whom presented evidence that the legislative intent behind §8(a) had been to mandate the location of TVA headquarters. Senator Bankhead, Representative Sparkman, and Senator Hill testified.[38] Mr. Stuart Tulloss, an attorney and Chief of Investigation of the General Accounting

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[37] E.g., Joint Committee Hearings, supra at 504-505, 834-838, 1224-1225.

[38] Joint Committee Hearings, supra at 3760-3771 (Sparkman), 5203-5222 (Bankhead), and 5222-5227 (Hill).

Office, testified that in that office's opinion §8(a) mandated the location of TVA headquarters in the immediate vicinity of Muscle Shoals, Alabama.[39]

While a Representative, Senator Hill had been a member of the House Committee on Military Affairs which had reported out the principal office provision as part of what became the Muscle Shoals Act of 1928.[40] He testified unequivocably about the reason the provision was made part of that original legislation on the subject.[41] Senator Hill had also co-authored along with Senator Norris, the TVA Act of 1933, and he explained how

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[39] Joint Committee Hearings, supra at 4405, 4480-4485.

[40] Joint Committee Hearings, supra at 5223-5224.

[41] Id. at 5223-5225. Part of Senator Hill's testimony in this regard is set out on pages 107a-108a, of this addendum, above.

and why the principal office provision was made part of it:

> When the present administration came into power, as you recall, in those early days, it was somewhat the custom for bills to be written at the other end of the Avenue and sent up to this end for enactment. The bill, however, creating the Tennessee Valley Authority did not follow that course. The conference was held between the President, Senator Norris, Congressman McSwain, of North Carolina, and myself, and we agreed that Senator Norris and Mr. McSwain and I would write the legislation.
>
> Senator Norris came on back and wrote the bill creating the T.V.A., and Mr. McSwain and I went back to the House side and wrote a somewhat similar bill. Into both of those bills went this provision, this identical language, and whenever the question came up in the committee, Mr. Wolverton no doubt can bear testimony at this time; he was at that time an honored member of that committee; it was--the reasons were given, based on economy, based on feasibility, based on efficiency, and so the bill passed both the House and the Senate, was signed by the

President of the United States, and became the law with this provision in it.[42]

Representative Wolverton, to whom Senator Hill referred was a member of the Joint Committee who joined in the minority report which found that TVA's failure to locate its headquarters in the Muscle Shoals area was a violation of section 8(a).[43]

The explanation which TVA had given for originally locating its headquarters offices in Knoxville was that it was near the first large construction project, Norris Dam.[44] TVA officials did not view that as a permanent headquarters location, and they had indicated to

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[42]Joint Committee Hearings, supra at 5225.

[43]Joint Committee Report, supra at p. III, and at 330-331.

[44]E.g., Joint Committee Hearings, supra at 3763.

Alabamians that it was temporary.[45] During the Joint Committee hearings, TVA officials stress the need for "flexibility to move about during the construction period in the interest of managerial economy at the time," and emphasized that the corporate offices situation might change after the construction period was over.[46] In view of the fact that the location of TVA

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[45] Id., supra at 3770; In 1953, TVA admitted to a Senate subcommittee that, "At the time TVA was established, it was generally assumed that the permanent headquarters would be on the Government reservation at Muscle Shoals." Hearings on the (Second) Independent Offices Appropriation Bill for 1954 (H.R. 5690) Before the Independent Offices Subcomm. of the Senate Comm. on Appropriations, 83d Cong., 1st Sess. [hereafter cited as Senate Hearings on Second 1954 Appropriation Bill], at 90.

[46] Joint Committee Hearings, supra at 836.

headquarters in Knoxville was temporary and was tied to completion of the construction phase, the committee was justified in believing as one member said that as soon as the construction was completed, "the situation may take care of itself at that time."[47] Indeed, in 1939, the same year the Joint Committee report was issued, TVA did in fact decide to move its headquarters to the Muscle Shoals area.[48] The attitude of the majority of the committee toward the problem was reflected in the candid comment of its Vice Chairman that, "there is something in the law that perhaps has been at least technically evaded, which requires the location of the headquarters

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[47] Id., supra at 3770.

[48] House Hearings on First 1954 Appropriations Bill, supra at 1240 (1953).

at Muscle Shoals.[49] Joint Committee Vice Chairman Mead ultimately joined in the majority report.[50]

C. The Reports: A "Substantial Difference of Opinion on the Subject"

The majority finding on the issue, reported on April 1, 1939, was as follows:

> Subsection (j): The committee finds that the Authority has legally complied with that part of subsection (a) of section 8 of the Act, as amended, which requires that the principal office of the Authority be maintained in the immediate vicinity of Muscle Shoals, Ala. However, on account of the substantial difference of opinion on the question, the committee recommends that, in view of the approaching completion of the dams, Congress give immediate

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[49] Joint Committee Hearings, supra at 3081.

[50] Joint Committee Report, supra at p. III.

consideration to clarifying the issue.[51]

Two important paragraphs of the majority report discussing that finding show that the majority was influenced by temporary economic considerations. Those two paragraphs, and the final one, are as follows:

. . .

> Because of the disagreement which has developed over the interpretation of the act, it seems proper, however, to comment on the wisdom of the Authority's decision.
>
> To house administrative offices and employees at Muscle Shoals would require construction at the Shoals of office space and employee housing costing over $4,500,000. Much of this space would not be required by the Authority after the construction period was over and the Authority becomes

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[51] Joint Committee Report, supra at 9 (Emphasis added) (footnote omitted).

> an operating organization. It now appears more economical to utilize rental and rent-free space in Knoxville and Chattanooga, pending completion of construction of the 10-dam system.
>
> In view of the approaching completion of the dams the committee recommends that Congress give immediate consideration to clarifying the question about which substantial difference of opinion has existed.[52]

No member of the six-man majority was on the original congressional committees which produced the TVA Act.

Three of the nine members of the Joint Committee filed a vigorous dissenting report in which they stated unequivocably that the location of TVA headquarters in Knoxville was a "palpable

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[52]The citations which the majority report relied upon for its statement that "principal office" was not synonymous with operating or administrative headquarters do not support that position.

violation of this mandatory provision of the TVA Act."[53] Significantly, one of the three dissenters was Representative Wolverton of New Jersey, the only member of the Joint Committee who had been on either the House or Senate Committee that produced the TVA Act of 1933.[54]

VII. The Attempts to Move

A. The Planned Move

The Congress to which the Joint Committee reported did not enact legislation to answer the section 8(a) issue and resolve what the majority report recognized as "the substantial

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[53] Joint Committee Report, supra at 330-331.

[54] Id. at p. III; Joint Committee Hearings, supra at 5225.

difference of opinion on the issue."[55] The reason is that immediately after the Joint Committee issued its report, it appeared that the entire issue would be mooted by TVA's announced plans to move much of its administrative operations to the Muscle Shoals area. As TVA's general counsel testifying before a House subcommittee told an inquiring Alabama congressman at a later date, "The point has become academic, I believe, Mr. Andrews, in view of the Board's decision to move to Muscle Shoals. . . ."[56]

TVA's Board of Directors decided in 1939, "that the administrative advantages of remaining in Knoxville had largely disappeared, and that the time had

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[55]Joint Committee Report, supra at 9.

[56]House Hearings on First 1954 Appropriation Bill, supra at 1276.

therefore come for the moye to Muscle Shoals."[57] The offices which TVA intended to move were the offices of its Board of Directors, and those other offices which included the work of TVA's "central administrative force".[58]

B. Frustration of the Planned Move During the Period From 1939 to 1952

In 1940, TVA requested from the Bureau of the Budget funds for the construction of office facilities at Muscle Shoals, but the request came after the fall of France and during the war

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[57] Id. at 1239-1240 (March of 1953) (testimony of TVA's General Manager).

[58] Id.; Hearings Before the Subcomm. of the Senate Comm. on Appropriations on H.R. 6777, 79th Cong., 2nd Sess. at 5 (1946).

materials shortage.[59] The Bureau of the Budget denied the requested funds, "because of the materials shortages, and a feeling that we were moving into an urgent situation with regard to building supplies required in the defense effort."[60] World War II itself further frustrated plans for the move.[61]

After the war, TVA requested, the Bureau of the Budget approved, and Congress appropriated funds for use in planning the construction of office

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[59] Senate Hearings on Second 1954 Appropriation Bill, supra at 90 (1953).

[60] House Hearings on First 1954 Appropriation Bill, supra at 1299-1300 (1953) (testimony of TVA's General Manager); Senate Hearings on Second 1954 Appropriation Bill, supra at 90. See also, Hearings Before the Subcomm. of the Senate Comm. on Appropriations on H.R. 2788, 77th Cong., 1st Sess. at 50-51 (1942).

[61] Senate Hearings on Second 1954 Appropriation Bill, supra at 90.

facilities at Muscle Shoals.[62] Subsequently, federal budgetary policy changed to restrict capital expenditures and favor instead of other means of financing.[63] Accordingly, in 1948 TVA began searching for office space to rent in the Muscle Shoals area. Several proposals for separate rental facilities were considered and rejected.[64] An acceptable proposal was finally obtained from a private builder, but before it could be finalized the Korean War broke out and created another building materials shortage.[65]

The frustration of TVA's plans to move its headquarters during the period

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[62] Id.

[63] Id. at 90, 109-110.

[64] House Hearings on First 1954 Appropriation Bill, supra at 1301-1303.

[65] Id. at 1305.

between 1939 and 1952 was not caused by interference from Congress or the administration. As TVA summarized the matter in a prepared statement submitted to a Senate subcommittee in June of 1953:

> . . .
>
> The TVA Board proposes to move to Muscle Shoals because it will save money and add to the efficiency of TVA's work.
>
> This transfer has a long history. At the time TVA was established, it was generally assumed that the permanent headquarters of the Board would be on the Government reservation at Muscle Shoals. But when the Board took up its duties, it found that its most pressing job was the construction of Norris Dam and the preparation of plans for structures on the upper tributaries of the Tennessee. This suggested that for the time being Knoxville was a better location for the Board than Muscle Shoals.
>
> Fourteen years ago, within three years after the completion of Norris Dam, the Board of Directors concluded that the administrative advantages of

remaining in Knoxville had largely disappeared, and that the time had therefore come for the move to Muscle Shoals. In 1940, funds were requested of the Bureau of the Budget for construction of office facilities at Muscle Shoals. The request came to the Bureau in the autumn of 1940, after the fall of France, when materials shortages were already developing as a result of the stepped-up production program. So the allowance was postponed. World War II, of course, further delayed the move, and during the war years, when there was a heavy concentration of work on the tributaries, Knoxville was a reasonable location.

In the spring of 1946, in connection with the TVA appropriation bill for 1947, the Congress approved an item for carrying out initial planning for office facilities at Muscle Shoals. The record of the hearings includes a copy of the justification presented to committees of the House and Senate and testimony by the Chairman of the Board, then Mr. Lilienthal, reaffirming the Board's decision to move.

Again, in January 1947, it was indicated to the Senate Committee on Public Works that the TVA Board and major staff could function most effectively from Muscle Shoals.

Subsequently, Federal budget policy restricted or prohibited capital requirement where other means of financing could be obtained. Therefore, TVA, though it had received money for planning the office facilities, did not request funds for construction. Consequently, in the spring of 1950, TVA's General Manager recommended to the TVA Board that proposals be solicited from private builders who might be interested in providing space and leasing it to TVA. An acceptable and advantageous proposal was obtained, but prior to its formal acceptance the outbreak of hostilities in Korea and the increased drain of military requirements on steel and other materials made it obvious that the project should not go forward for the time being. In order that the arrangement might be carried out with least delay, letters were exchanged with Mr. Wallace S. Pitts, who submitted the most favorable proposal, recording the understandings reached before the plan was deferred.

In the early spring of 1952, when it became apparent that the steel shortage was likely to be eased soon, negotiations were resumed, and resulted in an agreement signed on behalf of the TVA Board

March 10, 1953. Under this lease arrangement a heavy capital expenditure at this time is avoided.

Although employees in units scheduled to be transferred to Muscle Shoals have known for years that their location in Knoxville should be considered as temporary, and the Board's intention to move has been repeatedly expressed, announcement of the signing of the lease agreement brought an immediate reaction from the Knoxville Chamber of Commerce and other local groups.[66]

. . .

C. The Appropriation Act Provisos - 1953 to 1956

When it was announced in March of 1953 that the relocation of TVA's headquarters to Muscle Shoals would result in Knoxville losing 500 jobs and a multi-million dollar payroll, Knoxville commercial and community interests raised

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[66] Senate Hearings on Second 1954 Appropriation Bill, supra at 90. The entire statement is reprinted in full in 99 Cong. Rec. at 2603-2604.

a howl of protest.[67] Representative Baker of Tennessee likened the effect of the announcement to that of an atomic bomb dropped on the city.[68] The Tennessee congressional delegation launched a vigorous, clever, and ultimately successful effort to frustrate TVA's plans to move.

The success of their effort was due in no small part to the fact that some members of Tennessee's congressional delegation, including the Representative from Knoxville, were members of the party which controlled both houses of Congress and the White House during the crucial early years of the effort. In addition, relations between TVA and the administration ranged from bad to terrible.

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[67] House Hearings on First 1954 Appropriation Bill, supra at 1239.

[68] Id. at 1279.

President Eisenhower characterized TVA as "creeping socialism", and well-known bitter relations existed between the Bureau of the Budget and the TVA Board during this period. It was not a propitious time for the move.

Additionally, TVA made a serious blunder at a time when congressmen were hypersensitive about bureaucratic accountability. When TVA officials originally testified before the House Appropriations subcommittee on March 12, 1953, they did not mention that they had signed a multi-million dollar office building contract just two days earlier.[69] This arrogant omission outraged even moderate congressmen and

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[69] House Hearings on First 1954 Appropriation Bill, supra at 1238, 1309.

was used repeatedly by opponents of the move to rally opposition to it.[70]

House and Senate Appropriation subcommittee hearings were held on the subject. During these hearings, TVA officials repeatedly stressed that the intended move was in the best interest of economy and efficiency.[71] While TVA officials stated that §8(a) did not mandate the move, there is some indication that they tried to play both sides of the street on this issue. TVA's general counsel testified in reference to §8(a):

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[70] E.g., 99 Cong. Rec. 3611, 6659, 6660-6661, 6715 (Representative Baker of Tennessee: "In almost the words of the late Will Shakespeare: 'Upon what meat hath this little Caesar fed to grow up so fat?'")

[71] House Hearings on First 1954 Appropriation Bill, supra at 1239-1243; Senate Hearings on Second 1954 Appropriation Bill, supra at 91-92.

MR. SWIDLER. We have considered this as having been incorporated for purposes of jurisdiction, venue, and removal of litigation and not in order to fix the place at which the work of TVA is carried on. But the statute in other provisions indicates the contemplation by Congress that Muscle Shoals would become the domicile and actual residence of the Board ultimately. For example, there is a provision that, of the hundreds of houses which existed on the Muscle Shoals reservation when we came down there and which were built by the Corps of Engineers, three of the houses should be reserved for the use of the Board. That legal requirement prevented us from disposing of those three when we sold all of the other houses. They have to be available to the Board.

I should say our Board does not intend to use them. I mention that only as showing the contemplation of Congress that the Board would ultimately take up residence at the Shoals.[72]

Seeking to prevent the move, members of Tennessee's congregational delegation

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[72] House Hearings on First 1954 Appropriation Bill, supra at 1250 (1953).

introduced bills which would have had permanent effect. On March 23, 1953, Congressman Baker introduced H.R. 4146, which would have amended section 8(a). On April 1, 1953, Senator Kefauver introduced S. 1541, which would have permanently prohibited TVA from moving any office from Knoxville unless Congress consented.[73] Neither bill became law.

Instead, Congress enacted as part of TVA's appropriation bills for fiscal years 1954 through 1956 provisos which conditioned use of any of those appropriated funds to acquire an administrative office building on Bureau of the Budget approval following a feasibility study.[74] The Bureau of the Budget never acted to approved such a

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[73]H.R. 4146 and S. 1541 are discussed more fully at pp. 169a-172a, below.

[74]E.g., Second Independent Offices Appropriations Act of 1954, 67 Stat. 187, 190 (1953).

move because of the enmity between it and the TVA Board. The final fiscal year in which an appropriation act for TVA contained a proviso relating to the move was 1958, which involved a proviso that prohibited TVA from using any of that year's appropriated funds to acquire an administrative office building anywhere.[75] Thereafter, Congress took no action to hinder the move.[76]

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[75]Public Works Appropriation Act of 1957, 70 Stat. 474.

[76]It is questionable whether the General Government Matters Appropriation Act of 1958 would have prevented the move. It related solely to the purchase or construction of an office building, whereas TVA planned a lease-purchase arrangement. See, Senate Hearings on Second 1954 Appropriation Bill, supra at 90-92. In any event, that restriction like all of the others was in an appropriation bill and concerned only the funds appropriated for that fiscal year. Whatever the extent of the restriction contained in the General Government Matters Appropriation Act of 1958, it did not become part of the permanent law and is no longer in effect.

VIII. Attempts by Tennessee Congressmen to Amend Section 8(a)

A. S. 1207 and S. 1506 of the 79th Congress, 1st Session

Senator McKellar of Tennessee, like all Tennessee Congressmen, preferred that TVA headquarters remain in Knoxville. However, he realized that §8(a) required otherwise. During hearings held in 1944 on a TVA appropriations bill for the next fiscal year, Senator McKellar brought up the subject with Mr. Lilienthal of TVA.[77] After advising Mr. Lilienthal that "principal office" meant the chief office of the company, Senator McKellar said:

> And personally, I would like very much for you to be at Knoxville, but as I read the law, you began violating it when you moved it from Muscle

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[77] Hearings on H.R. 4070 (The Independent Offices Appropriation Bill for 1954) Before the Subcomm. of the Senate Comm. on Appropriations, 78th Cong., 2nd Sess., at 427-429.

Shoals, the vicinity of Muscle Shoals, to Knoxville.

> I think Knoxville is an ideal place for it, but the law says, it not only thinks it should be in the vicinity of Muscle Shoals, but it provides each member of the Board, in addition to his salary, shall be permitted to occupy as his residence, one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, the same to be designated by the President of the United States.[78]

. . . .

Later on, after reading aloud §8(a)

Senator McKellar said:

> I think Knoxville, of course, is the ideal place for it, but in examining this law, Mr. Lilienthal, it just seems to me that you have utterly disregarded its provisions in almost every respect, and that is just one of them that I recall.[79]

Mr. Lilienthal attempted to avoid Senator McKellar's wrath by suggesting that

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[78] Id. at 428.

[79] Id. at 429 (Emphasis added).

section 8(a) was only "a definition of legal domicile".[80] Senator McKellar replied to this suggestion as follows:

> May I suggest when you want to override the act of Congress you are violating it, it would be very much simpler and easier to have the Congress authorize it. We still have some interest in the Tennessee Valley Authority, notwithstanding the position you take about it, and it would be so much simpler, or so much easier, in the long run, either to follow the law or ask Congress for a change in the law, and after all, this Congress has not been abolished yet and is not likely to be for some little time, our Communistic friends to the contrary notwithstanding.[81]

Senator McKellar made several attempts to amend the principal office provision. In June of 1945, he introduced for himself and Senator Stewart of Tennessee, S. 1207:

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[80] Id.

[81] Id. (Emphasis added).

S. 1207

A B I L L

To repeal the requirement of existing law that the Tennessee Valley Authorit maintain its principal office in the vicinity of Muscle Shoals, Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (a) of section 8 of the Tennessee Valley Authority Act of 1933, as amended, is hereby repealed.

It was not enacted. In October of that same year, Senator McKellar introduced S. 1506:

S. 1506

A B I L L

To provide for maintaining the principal office of the Tennessee Valley Authority at Knoxville, Tennessee.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That subsection (a) of section 8 of the Tennessee Valley Authority Act of 1933, as amended, is hereby repealed.

SEC. 2. In view of the fact that the principal administrative office of the Tennessee VAlley Authority has been established and maintained at Knoxville, Tennessee, for many years, and in view of the fact that Knoxville, Tennessee, is centrally located in the area served by the Authority, Knoxville, Tennessee, is hereby designated as the place where the principal administrative office of the Tennessee VAlley Authority shall be maintained; and the Authority is hereby authorized and directed to prepare and submit to the Congress plans and specifications for such buildings and facilities at Knoxville, Tennessee, as may be necessary and appropriate for maintaining its principal administrative office at that place.

It was not enacted.

B. S. 1277 of the 80th Congress, 1st Session

In 1948, Senator McKellar tried again. He introduced S. 1277 which would

have amended numerous provisions of the TVA Act of 1933, including section 8(a). It would have changed that provision to read:

> "Sec. 8. (a) The Corporation shall maintain its principal office in the vicinity of the dams either in the State of Tennessee or the State of Alabama. The Corporation shall be held to be an inhabitant and resident of the state in which, on the date of enactment of the Tennessee Valley Act Amendments of 1947, it maintains its principal office within the meaning of the laws of the United States relating to the venue of civil suit."[82]

Extensive hearings were held on the bill, but it was not enacted.

As part of its consideration of S. 1277, the subcommittee of the Senate Public Works Committee requested the views of the Justice Department concerning

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[82] Hearings on S. 1277 Before a Subcomm. of the Senate Comm. on Public Works, 80th Cong., 2nd Sess. at 4 (1948).

the bill.[83] In response to the subcommittee's request, Douglas W. McGregor, Assistant to the United States Attorney General, wrote a lengthy letter of evaluation concerning the changes that the bill would make. The Justice Department's official evaluation of the principal office provision is as follows:

> Section 8(a) of the Tennessee Valley Authority Act now provides that "The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits." In fact, the Tennessee Valley Authority's principal office is in Knoxville, Tenn. Section 6 of the bill would amend section 8(a) of the act to read as follows: "The Corporation shall maintain its principal office in the vicinity of the dams either in the State of Tennessee

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[83] Id. at 85.

> of the State of Alabama. The Corporation shall be held to be an inhabitant and resident of the State in which, or the date of enactment of the Tennessee Valley Authority amendments of 1947, it maintains its principal office within the meaning of the laws of the United States relating to the venue of civil suits." This amendment would apparently have the effect of changing the venue for suits against Tennessee Valley Authority from the northern judicial district of Alabama to the eastern judicial district of Tennessee.[84]

C. H.R. 4146 of the 83rd Congress, 1st Session

In March of 1953, after TVA had announced that it would move its administrative headquarters from Knoxville, Congressman Howard Baker from Knoxville introduced H.R. 4146, which provided:

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[84] Id. at 87 (Emphasis added).

H.R. 4146

A B I L L

To amend section 8(a) of the Tennessee Valley Authority Act of 1933 so as to provide that the Tennessee Valley Authority shall continue to maintain its principal office at Knoxville, Tennessee.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 (a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C., sec. 831g (a)) is amended to read as follows:

"SEC. 8. (a) The Corporation shall maintain its principal office in the immediate vicinity of Knoxville, Tennessee. The Corporation shall be held to be an inhabitant and resident of the eastern judicial district of Tennessee within the meaning of the laws of the United States relating to the venue of civil suits."

In explaining the purpose of H.R. 4146 to his colleagues, Representative Baker admitted:

> The act provided that the corporation should be held to be an inhabitant and resident of the Northern Judicial District of Alabama. However, Tennessee Valley Authority has always maintained its principal offices at Knoxville, Tennessee.[85]

H.R. 4146 was not enacted.

D. S. 1541 of the 83rd Congress, 1st Session

In April of 1953, Senator Kefauver introduced S. 1541 which would have prevented TVA from moving any office or facility in Knoxville to any other place before June 30, 1958. It would also have prevented any such move after that date unless Congress consented.[86] Senator

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[85] 99 Cong. Rec. 2321 (March 25, 1953) (Emphasis added).

[86] A copy of S. 1541 was submitted as an appendix to Alabama's brief in the district court, and it was transmitted to the appellate court on March 13, 1979, with the record on appeal. See, R. 319.

Kefauver said on the floor of the Senate that he had been informed by legislative counsel that his bill would be considered in the nature of overriding legislation, insofar as fixing the legal residence of TVA was concerned.[87]

E. H.R. 1215 and S. 757 of the 96th Congress, 1st Session

After the district court rendered its opinion and order in this case, Senator Baker of Tennessee introduced S. 757, which provides:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 8 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831g (a)) is amended-
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> (1) by striking out the first sentence and inserting in

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[87] 99 Cong. Rec. 2603 (April 1, 1953).

lieu thereof the following: "The Corporation shall maintain an office in the immediate vicinity of Muscle Shoals, Alabama, which shall be considered for purposes of jurisdiction, venue, service of process, and other similar judicial purposes, as the principal office of the Corporation.", and

(2) by adding at the end of such subsection the following new sentence: "The Board of Directors may establish and maintain such administrative or other offices for the Corporation as they deem in the best interests of the efficient and effective operation of the Corporation."[88]

Neither S. 757 nor H.R. 1215, which was identical to it, was enacted.

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[88]125 Cong. Rec. S. 3347 (dailey ed. March 26, 1979).